STATE OF CALIFORNIA
Energy Resources Conservation
And Development Commission

In the matter of:

The Application for Certification for the
CARLSBAD ENERGY CENTER
PROJECT

Docket No. 07-AFC-6

PETITION FOR RECONSIDERATION
of Commission Decision

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Appeal of Coastal permit, Authority To Construct (ATC), any other permit or approval that

the Decision overrides, subsumes, circumvents or precludes and "for any inconsistencies that might be found." 8.1-10

This Petition is filed Pursuant Section 25530 of the Warren Alquist Act. The basis for the Decision is flawed in its entirety. The Commission should reconsider De Novo and "on the basis of all pertinent portions of the record" § 25530. I seek leave to file arguments on this petition.

The Commission should not be playing 3 card monte with State and Federal regulatory programs. It should be self evident from the public notices and Decision what permits this decision represents, it is not. The Commission violated Due process in issuing a Coastal permit under the Coastal Act, Air pollution permit under the Clean Air Act a Take permit under the Endangered Species Act and others . The Commission never provided public notice that it intended to issue any such permits or identified the permits, as such, in their issuance. The Commission violated the Public Trust in overriding the Coastal Act. The Commission never considered the merits of my underlying appeal of the air Districts flawed Final Determination of Compliance.

REPLY TO RESPONSE TO COMMENTS

The Decision claims; "Intervener Rob Simpson (Simpson) asks that the Energy Commission not make a decision on this project until it has its full five members and believes that it is important that the Commissioner positions requiring backgrounds in environmental protection and economics be filled. He does not cite any legal authority, however, and Public Resourses Code §25209 requires that three Commissioners may take action on Commission business. We also note that, following the release of the RPMPD, Andrew McAllister was appointed to fill one of the vacant positions, increasing the number of Commissioners to four." The statement completely misstates my comment and PRC. 25209. I clearly cited the legal authority in my comment and 25209 states; "Each member of the commission shall have one vote. Except as provided in Section 25211, the affirmative votes of at least three members shall be required for the transaction of any business of the Commission." It does not give the Commission the authority to act or even exist in absence of 5 members with the appropriate experience.

Section 25200 There is in the Resources Agency the State Energy Resources Conservation and Development Commission, consisting of five members appointed by the Governor subject to Section 25204

Section 25201 One member of the commission shall have a background in the field of engineering or physical science and have knowledge of energy supply or conversion systems; one member shall be an attorney and a member of the State Bar of California with administrative law experience; one member shall have background and experience in the field of environmental protection or the study of ecosystems; one member shall be an economist with background and experience in the field of natural resource management; and one member shall be from the public at large.

The Decision states; “adoption of the No Project Alternative—denial of this Application for Certification—would not likely maintain the status quo because market and regulatory forces are likely to cause other sites in the San Diego urban area to be considered for development with a modern, efficient, dispatchable, generator. Because those sites are likely to be less intensely developed than the EPS site, perhaps even undeveloped, they are likely to give rise to greater levels of environmental impact than the construction of CECP as proposed on the EPS site. Thus the No Project Alternative is not environmentally superior to the CECP” 3-20. The highly subjective fear mongering statement is “without apparent regard to a balancing of competing interests” Its like raping someone because it is dark, and if you don’t do it someone else might, and they might not be as nice as you, instead of teaching the person in the dark to use clean energy to keep the lights on. If the project is not built it will more likely result in energy conservation and clean, distributed, electrical generation in the region.

The Decision relies on “In 2010, the Bay Area Air Quality Management District (BAAQMD) adopted Air Quality Guidelines which treat GHG emissions from construction in a manner similar to the CARB’s Preliminary Draft Staff Proposal.” 6.1-7. The Commission should not rely on BAAQMD’s guidelines as they were deemed unlawful on March 5, by the Superior Court see; CBIA v. BAAQMD, Alameda County Superior Court Case No. RG10-548693

The Decision further relies on the "Avenal AFC precedent decision" yet no authority to Rely on Avenal as a precedent exists. One bad decision does not give the Commission the Authority to continue to rely on that bad decision and ignore its regulatory duty in other decisions. Reliance on the Avenal precedent constitutes an illegal rulemaking.

The Decision states; "Intervener Simpson commented that the Commission should adopt the life-cycle cost analysis approach used by the South Coast Air Quality Management District for assessing the CECP's potential for significant greenhouse gas emission impacts. The Natural Resources Agency's CEQA Guidelines for GHG analyses, described above, do not present it as a specific method or recommend its' use. We believe that the approach we have chosen is a reasonable response to the Guidelines" 6.1-20. Any approach that concludes that the Greenhouse gas emissions are not significant is a farce. Failure to mitigate the effects of the project effectively subsidizes the development of the project, at the expense of the people of California, the environment and the clean energy industry. The Decision compromises the Commissions integrity. It is not; "a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project," 6.1-4

The Decision states; "Mr. Simpson also requests that the Commission condition the project so that "[c]onstruction is subject to the CPUC approval of a Power Purchase Agreement which compensates the operator only for generation and not for the capacity to generate. The PPA must stipulate that the Greenhouse gas emissions from the facility must be sufficiently below available generation to offset construction greenhouse gas emissions within 5 years of construction". (Carlsbad PMPD" 6.1-Comments. By Rob Simpson and Helping Hand Tools (2HT), a California Nonprofit Corporation, April 27, 2012, p. 17.) He does not explain how or what purposes this proposal would advance. Having found the CECP's GHG emissions to be insignificant, we see no reason to interfere in the market contracting process" 6.1-21
While the Decision appears to feign a lack of understanding of the basis for my statement the response bears the basis. My contention is that the Greenhouse Gas emissions are significant and unmitigated. If the project is constructed and does not operate, the Construction impacts

will not be mitigated, as the decision contemplates. Additionally the preceding paragraphs of my comments dispelled the Decision's claims "Only if the market decides that it is likely that a project will be able to generate sufficient revenue from sales of its electricity to cover its costs of construction capital and operating expenses, (fuel, wages, etc.) will a project be built. ….Without a PPA, a project is unlikely to be constructed." 9-5 which was the basis for the override, but contained no governing provision. Just because the project may generate revenue does not mean that its impacts are mitigated. The Decision should not rely on the likelihood of a PPA to override all other laws. A PPA approved by the CPUC, with limitations should be a condition.

The Decision states; "In comments on the RPMPD, Intevener Simpson suggests two additional alternatives—adding wind turbines to the CECP stacks and/or placing a central receiving solar thermal generator on the entire Encina site in place of CECP. Turbine blades are infeasible for the visual impacts they would create. Solar panels with a tower like central receiver glowing brightly during the day would likely raise visual impact issues and would frustrate the City's plan to redevelop at least the portion of the Encina site between the rail corridor and the beach. As we are required to study a "reasonable range of alternatives," not an infinite range, and with these proposals coming so late in the process, we will simply acknowledge them without further study." The Decision misstates my comment. I did not suggest a central receiver tower solar system I merely quoted the PMPD. The Decision dismissed wind generation without adequate consideration. At some scale the turbine blades, which may not be on the stacks, would be an insignificant visual impact. I expect that if the community had the choice of wind turbines or deadly smoke stacks they would choose the turbines. The response also appears to claim that my comments were untimely, They were not.

The Decision states; "Simpson cites a California Attorney General publication (Addressing Climate Change at the Project Level, http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf), suggesting that it compels us to require the installation of solar panels on suitable surfaces on CECP. In fact, this document offers a menu of mitigation measures for projects that are found to have climate change impacts. Here, we find that the CECP has no significant climate change impacts and

offers the benefits of integrating and supporting renewable energy generation and reducing climate change impacts from the fosil fueled generating fleet. No mitigation is necessary" 3-3 Fossil fuel fired electrical generation is the leading cause of climate change. The finding of "no significant climate change impact" damages the Commissions credibility. It serves only the fossil fuel burning industry. To reach its finding the Commission had to pretend that superior generation methods do not exist. The Commission had to also pretend this project which purportedly "will help integrate additional renewable generation into the electricity system". can not reduce impacts by integrating renewable generation. To reduce climate change impacts from the fossil fueled generating fleet we should not develop more fossil fuel generating sources we should develop cleaner resources. Every plant developed claims to be to integrate and support renewable resources but the renewable resources are not being developed because of the overbuilt fossil fuel burning fleet.

The Decision states; "Intervener Rob Simpson asks, in an RPMPD comment, that funding be set aside for the retirement of the CECP facility, specifically a condition that the "Developer is to deposit $10,000,000 per year with the Commission until it can demonstrate adequate funds to dismantle the facility upon retirement." The Commission has not previously imposed such a requirement. No evidence suggests that failing to remove this facility after it ceases generating electricity will have any unmitigable significant environmental impacts. The policy question raised by Mr. Simpson's request is worthy of further study, however, and we refer it to the Commission's Integrated Energy Policy Report Committee for future consideration." 4-2

I appreciate the referral to the IEPR Committee but my comment was not a "policy question" it was a request for a condition based upon the record for this proceeding. I did not claim that "failure to remove the facility after it ceases generating electricity" (or getting paid not to generate) was unmitigable. My contention is that it is unmitigated and I proposed appropriate mitigation. This requires no further study to initiate. The response does not indicate that there is no impact or that the impact was mitigated.

The Decision states; "Mr. Simpson suggests that the Air District's FDOC has expired, referring to a San Diego State Implementation Plan rule that an Authority to Construct (ATC)

expires one year from the date of issuance unless a longer period, up to five years, is granted. In Energy Commission proceedings, the Final Commission Decision, serves as the ATC. Our certifications are valid for five years. (Cal. Code Regs., tit. 20, §1720.3.) No Final Commission Decision had been issued at the time of Mr. Simpson's comment and the ATC was therefore not issued, much less expired. We also note that the Air District stated in an August 12, 2011 letter to Mike Monasmith that the FDOC "remains valid." 6.2-29. The response ignores the regulatory structure identified in the comment. If the Commission issued an ATC that does not extend the air districts expired FDOC. The Commission failed to demonstrate any regulatory authority which allows a letter from Mike Monasmith to determine that the FDOC did not expire, as none exists.

The Decision states; "The testimony and briefs have explained that the federal PSD process, including its appeals, can take years to complete, and that EPA would prefer to see all state permits issued prior to completing its process. Moreover, the testimony is that projects licensed by the Commission have not been altered in any significant way by the subsequently issued federal PSD permit, either with regard to emissions levels or mitigation, and this has continued to hold true for the GHG PSD permit EPA recently issued for the Palmdale project. (12/12/11 RT 208-209, 218, Ex. 199N.) Staff testified that CECP would meet federal BACT requirements for PSD." 6.2-27. The statement is completely false. Projects have been significantly altered by PSD permits. My appeal of the Russell City Energy center to the EPA demonstrated that the Commission failed in its public notice and participation procedures. The following years improved the project significantly. My appeal of the Gateway generating Station to the EPA demonstrated that the Commission failed to require a PSD permit before the project was constructed. The Department of Justice took jurisdiction and corrected the Commissions mistake. My appeal of the Humboldt Bay project resulted in significant changes including the disclosure that the permit was a State Permit. My comments on the Palmdale project resulted in significant changes including the EPA determination that Solar energy constituted BACT for GHG, a fact that the Commission and staff chose to ignore in this proceeding and BACT testimony. The Palmdale permit is also not a final permit as the EPA is still considering my appeal. The notion that this process must be complete before the EPA considers a PSD permit is also without merit. The EPA has issued a draft permit for the Pio

Pico project and the project has not even began evidentiary hearings at the Commission.

The Commission has considered PSD regulations in each license proceeding in which I have participated. The procedure is simply omitted in this proceeding because it is obvious that the project does not comport with PSD permit requirements, as confirmed by the EPA. The Commission's is evading the PSD issue. This creates the false appearance of a lack of Federal nexus. The Air District, Coastal Commission, Endangered Species Act and Commission rules do not allow this action without a PSD permit determination.

The Decision states; "Mr. Simpson makes broad, unsupported statements alleging deficiencies in the FDOC and other aspects of the air quality evidence. He also asks a series of questions about the assumptions and methodologies behind that evidence. Discovery is long ended. Mr. Simpson participated in the evidentiary hearings at which such questions could be raised, and many were in fact discussed, if not by Mr. Simpson, then by other parties. The questions are not new and were addressed either in the FDOC, staff or applicant testimony, or the PMPD and RPMPD. He has offered no credible evidence in rebuttal or in support of his various assertions that the analysis was incorrectly conducted. We find no reason to question the efficacy of the Air District or Commission Staff's analysis." The Decision's wholesale dismissal of my comments is typical of this proceeding. The response is incorrect. My comments are specific, supported and without response on this record. The Commission should "question the efficacy of the Air District or Commission Staff's analysis" because that is its duty. The response indicates that I am not due a response because "Mr. Simpson participated in the evidentiary hearings" The Decision is prejudiced against me, for my prior participation in this proceeding. The response censors my free speech and limits my participation in the PMPD comment opportunity in retaliation for my prior participation, in this proceeding. My speech occupies the highest level of protection under the Constitution of the United States see Snyder v. Phelps. The Comments were also on behalf of Helping Hand Tools who did not participate in the proceeding and should also not be prejudiced. The Commission failed to adequately respond to our comments.

The Decision states; "Intervener Rob Simpson asserts that a Maximum Achievable Control

Technology (MACT) analysis must be conducted for the project and that the FDOC failed to do so. The SDAPCD is required to conduct a Toxics Best Available Control Technology (T-BACT) analysis and did in fact do so in preparing the FDOC. We also note that the Bay Area Air Quality Management District, in its Best Available Control Technology (BACT) Guideline, describes its T-BACT determinations as having "historically been at least as stringent as federal Maximum Achievable Control Technology." http://hank.baaqmd.gov/pmt/bactworkbook/default.htm, Section 1, BACT/TBACT Policy and Implementation, Introduction.) Absent a showing that a MACT analysis provides anything beyond the T-BACT analysis already covered, we see no reason to require one." 6.3-7 The reason to require one is because that is the law. BAAQMD's statement is taken out of context, the following sentence in the workbook confirms that; "a MACT determination must be made".

The Decision states; "The CECP will use dry cooling technology, and thus does not require intake or outflow of ocean or lagoon water for once through cooling purposes" 7.1-7 The project requires the intake of ocean water, the impacts for which have not been mitigated. The concept that it is ok for the project to take ocean water without a new permit because you call it something else is like making tea with toilet water, it might be tea but it's still toilet water.

The Decision states; " Intervener Simpson asks, in his RPMPD comments, a converse question - if the Encina OTC cooling water use ceases, will marine organisms, having become acclimated to the heated water discharged by the facility, be harmed by its elimination? While we are unaware of any specific evidence on the point, we infer from the scientific studies that informed the state policies and mandates to eliminate once through cooling, that a net benefit to aquatic species would result from shutting down Encina's OTC system. Further study of this highly speculative notion is Unwarranted" 7.1-8 While "a net benefit to aquatic species" may occur, unmitigated impacts to specific species may also occur. The unstudied concern should be studied.

The Decision states; "Intervener Simpson raised questions regarding potential impacts on the federally listed endangered fairy shrimp, deposition effects of criteria and non-criteria

emissions on various biological resources in the vicinity, and potential impacts of fast-start turbines and related thermal plumes on avian species. No witness testimony or other evidence has been presented to indicate that construction or operation of the CECP could result in these impacts. Mr. Simpson simply raises the questions without offering any justification for us to conclude that they were not already considered in the Commission staff's analysis and other evidence Presented." 7.1-9 The Commission again appears to wish prjudice my comments by holding me to a higher standard than other members of the public. Apparently I am expected to prove in comments that there are "impacts" and prove that the Commission did not consider them. The response to comments is the opportunity for the Commission to justify its decision, not to attempt to shift blame to the commenter . I found no other commenter held to this standard.

My comment is also completely misstated. I offered ample "justification.. to conclude that (the issues) were not already considered" If the issues were adequately considered the Commission would have just pointed them out instead of its parry to my comment. I cited several commission reports and stated;" The PMPD is silent regarding potential air pollution impacts to the adjacent special status species and Critical Habitats, it appears that no study was performed." The statement has not been disproved. The Commission must consider nonpoint pollution, including Nitrogen deposition impacts under the Clean Water Act (CWA) Section 319 Nonpoint Source Program, State Water Resources Control Board, *Coastal Nonpoint Pollution Control Program Guidance for Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)* (NOAA and EPA, October, 1998), Clean Air Act, Porter Cologne Act and its own rules.

The Decision states; "The CECP, proposed inside the existing boundaries of the EPS site, is consistent with the Coastal Act policy that prefers on-site expansion of existing power plants to development of new power plants in undeveloped areas of the Coastal Zone. The EPS property is zoned for public utility use and has been previously developed in its entirety for industrial uses. Construction of the CECP on the site of an existing industrial property with access to existing power infrastructure, and with limited adjacent sensitive uses, has greater relative merit to development of a power plant at an alternative site. Therefore, the CECP is

consistent with Section 30260 of the Coastal Act. The CECP's opponents appear to believe that the Coastal Act requires that an industrial development be "coastal-dependent" in order to be approved in the coastal zone.1 They cite no authority for that proposition beyond the Act." 8.1-8 The Decision can not be; "consistent with Section 30260 of the Coastal Act." because the Notice of Intention laws were not followed. If the Notice of Intention laws were followed the Commission may have reached a completely different conclusion. The project is not preferable because it is not compared to an alternative "in undeveloped areas of the Coastal Zone".

The Decision bolsters its Coastal conformity determination; " Recently, in fact, the Coastal Commission itself approved a peaker plant in the coastal zone. In 2007, the City of Oxnard denied an application from Southern California Edison (SCE) for a coastal development permit for a 45-megawatt natural gas fired power plant to be constructed next to the existing Mandalay Generating Station. Although power generating facilities were conditionally allowed in the applicable city zone, the project was found to conflict with a zoning code provision stating "coastal dependent energy facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth, where consistent with this article," words identical to the portion of section 30260, set forth above. Because the proposed
peaker project was not "coastal-dependent," the City reasoned, it could not be Approved… (The Coastal Commission) overruled the City and granted the permit".

The Carlsbad proposal is 12 times the size of the Oxnard expansion. The people of Carlsbad would seem to be much happier, and more appropriately served by the same size facility as Oxnard. The local ordinance cited in Oxnard with, "words identical to the portion of section 30260" does not contain the full text of 30260 which states; "Section 30260 Location or expansion Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1)

alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible" The Commission can not simply rely on some local ordinance that contains some words like 30260. The Coastal Act remains the legal standard of review.

The Commission has not made the findings necessary to comport with 30260. The Oxnard expansion was the subject of California Public Utilities Commission action, Carlsbad has no such validation, merely the support of the industry trade group CAISO. The Coastal Commission decision cited regarding Oxnard included; "Special Condition 10 was modified to require SCE to place $500,000 in an escrow account to be used for access and recreation improvements on one of SCE's parcels east of Harbor Boulevard…Condition 9 that SCE shall not construct a bluff or shoreline protective device to protect the development approved in this permit, the Commission requested that the term "sea level rise" be specifically included in the list of potential natural hazards. Finally, during the Commission's deliberations, a new special condition was added, Special Condition 11. This special condition requires SCE to submit, in 20 years, a written report that assesses the type, probability and magnitude of risks to the project site and facilities posed by coastal hazards such as flooding, erosion, sea level rise, and tsunami. The written report shall also discuss and evaluate the environmental conditions at the site which contribute to these hazards and risks…During local review of this project, the US Fish and Wildlife Service (FWS) raised concerns about the use of large trees for landscaping at the peaker plant site and the potential for these trees to attract nesting predatory birds such as crows and ravens, which could adversely affect nearby western snowy plover and California least tern nesting areas. In response, SCE developed a landscape plan (included as Exhibit 4) that avoids the use of large branching trees and includes only small native trees approved by FWS, native groundcover, bush and shrub species that are not known to provide nesting or roosting habitat for corvid and/or raptor Species."

The Commission should consider the entire record for the Oxnard action and incorporate appropriate sections, including the above, into this Decision. I raised some of the same issues with the Commission for this proceeding but I was ignored. If Oxnard paid $500,000 in

mitigation costs for 45 MW then Carlsbad proponents should pay at least $6,000,000 for the 540 MW

With regard to Oxnard, the Decision further states; “We accept the Coastal Commission’s interpretation of its governing statute and note that the same logic applies to section 30255 which gives “priority” to coastal dependent development but does not prohibit development that is not coastal Dependent.” 8.1-9 except the Coastal Commission was not interpreting its governing statute it was interpreting the City of Oxnard Coastal Program. The governing statute states; “Section 30255 priority of coastal-dependent developments Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support” The Commission needs to consider the Coastal Act as a whole and not make conclusions from one word in one section that does not specifically prohibit development, or on the Oxnard Zoning ordinance.

The Decision claims to comply with 30240 (b) but fails to demonstrate compliance with “30240 (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” Unless the claim is that the project is surrounded on at least 3 sides with “Environmentally sensitive habitat” yet somehow the fence magically keeps the birds and other biodiversity out than the project is in a sensitive habitat and therefore noncompliant, as it is not “dependent on those resources“.

The Decision states; “Due to its biodiversity of plants and animals as well as suitable habitat for special-status species, the Agua Hedionda Lagoon is regionally significant. Habitats include open water, sand and mud substrates, rock revetment, pilings, and aquaculture grow-out floats. These support diverse infaunal, bird, and Fish communities. Impingement surveys at the EPS intake structures recorded 96 taxa, demonstrating that the Lagoon is a highly productive and diverse system. Additionally, the Agua Hedionda Lagoon supports important populations of

special-status species such as the southwestern pond turtle, white-faced ibis, and western snowy plover; it also provides foraging habitat for American peregrine falcon and osprey. The estuarine and marsh habitat surrounding the Lagoon provides suitable nesting habitat for special-status species such as the California least tern, elegant tern, Belding's savannah sparrow, California brown pelican, and coastal California gnatcatcher." 7.1-2

The Decision states; "Although we believe that the CECP is consistent with the Coastal Act requirements, given the vociferous opposition from the City of Carlsbad and other project opponents, we will assume, for the sake of argument that the proposed project is not consistent with the Act and adopt overrides for any inconsistencies that might be found."8.1-10. We could have just skipped the massive charade of due process if the Commission simply issued a decision on the same day that the application was received; We hereby override Due Process, the Public Trust, Democracy, Free speech, the right to redress the government for grievances, disclosure, any laws that we violated and vote in favor of corporate pollution and energy control. This scorched earth strike against any opposition should not prevail.

The Decision states; "Intervener Rob Simpson asks that we clarify whether or not our certification of this project serves as the Coastal Act development permit that would otherwise issue from either the Coastal Commission or a delegated local agency. This is that permit." 8.1-14. This information should have been disclosed in Public Notices and throughout the proceeding. The Commission violated Due process by failing to inform the public of its intended action.

The Decision states; "A final avenue of Coastal Act compliance is found in Section 30264 of the Act: Notwithstanding any other provision of this division, except subdivisions (b) and (c) of Section 30413 , new or expanded thermal electric generating plants may be constructed in the coastal zone if the proposed coastal site has been determined by the State Energy Resources Conservation and Development Commission to have greater relative merit pursuant to the
provisions of Section 25516.1 than available alternative sites and related facilities for an applicant's service area which have been determined to be acceptable pursuant to the

provisions of Section 25516. Sections 25516.1 and 25516 of the Warren-Alquist Act referred to above relate to Notices of Intention rather than an Application for Certification such as that before us in this proceeding. Nonetheless, we have, by virture of the analysis conducted in order to consider overriding the LORS inconsistencies and CEQA impacts presented in this case addressed the questions presented in Section 30264. In deciding to override, we have found the proposed project site to be superior ("have greater relative merit") to the identified alternatives." 8.1-10

The above statement admits that 30264 applies to Notices of Intention. The Decision chides others for considering the letter of the law concerning Notices of Intention yet wishes to morph little pieces of it into what it wants it to be, by the so called "virture of the analysis" (I assume that the decision meant virtue, perhaps the writer could not bring himself to write it correctly.) There is no regulatory basis in this construction. The Decision does not comply with Section 30264, 25516 or 25516.1 as there was no Notice of Intention. The Commission should be held to at least the same standard that it wished to hold opposing parties to and either follow all of the law for Notices of Intention or Applications for Certification or both. The law is not some mix and match buffet.

The Decision states; "The City of Carlsbad and some of the other parties assert that we cannot decide this matter until the Coastal Commission provides a formal report to us as described in Public Resources Code section 30413(d). (City Opening Brief pp. 2, 83 – 88; Terramar Opening Brief p. 36; Simpson Opening Brief p. 13.) That requirement, however, applies to proceedings under Public Resources Code section 25510 regarding Notices of Intention. This proceeding is instead an Application for Certification under Public Resources Code section 25519 et. seq. Pursuant to Public Resources Code section 30413(e) Coastal Commission participation in Energy Commission siting proceedings other than Notices of Intention is discretionary." 8.1-10 This demonstrates why the Commission should consider the Coastal Act in its entirety if it wishes to override its rules. If the license was pursuant a Notice of Intention, the Coastal Commission would have participated and the Commission may have had the authority to evoke the rules that it claims to rely on. Because it was not issued pursuant a Notice of Intention the Commission can not rely on the Notice of Intention rules to

bolster its Decision.

Section 30264 Thermal electric generating plants. Notwithstanding any other provision of this division, except subdivisions (b) and (c) of Section 30413, new or expanded thermal electric generating plants may be constructed in the coastal zone if the proposed coastal site has been determined by the State Energy Resources Conservation and Development Commission to have greater relative merit pursuant to the provisions of Section 25516.1 than available alternative sites and related facilities for an applicant's service area which have been determined to be acceptable pursuant to the provisions of Section 25516.

Section 25516 The approval of the notice by the commission shall be based upon findings pursuant to Section 25514. The notice shall not be approved unless the commission finds at least two alternative site and related facility proposals considered in the commission's final report as acceptable. If the commission does not find at least two sites and related facilities acceptable, additional sites and related facilities may be proposed by the applicant which shall be considered in the same manner as those proposed in the original notice. If the commission finds that a good faith effort has been made by the person submitting the notice to find an acceptable alternative site and related facility and that there is only one acceptable site and related facility among those submitted, the commission may approve the notice based on the one site and related facility. If a notice is approved based on one site and related facility, the commission may require a new notice to be filed to identify acceptable alternative sites and related facilities for the one site and related facility approved unless suitable alternative sites and related facilities have been approved by the commission in previous notice of intention proceedings. If the commission finds that additional electric generating capacity is needed to accommodate the electric power demand forecast pursuant to subdivision (e) of Section 25305 and, after the commission finds that a good faith effort was made by the person submitting the notice to propose an acceptable site and related facility, it fails to find any proposed site and related facility to be acceptable, the commission shall designate, at the request of and at the expense of the person submitting the notice, a feasible site and related facility for providing the needed electric generating capacity."

Section 25516.1 If a site and related facility found to be acceptable by the commission pursuant to Section 25516 is located in the coastal zone, the Suisun Marsh, or the jurisdiction of the San Francisco Bay Conservation and Development Commission, no application for certification may be filed pursuant to Section 25519 unless the commission has determined, pursuant to Section 25514, that such site and related facility have greater relative merit than available alternative sites and related facilities for an applicant's service area which have been determined to be acceptable by the commission pursuant to Section 25516.

Section 30413 (b) The commission shall, prior to January 1, 1978, and after one or more public hearings, designate those specific locations within the coastal zone where the location of a facility as defined in Section 25110 would prevent the achievement of the objectives of this division; provided, however, that specific locations that are presently used for such facilities and reasonable expansion thereof shall not be so designated. Each such designation shall include a description of the boundaries of those locations, the objectives of this division which would be so affected, and detailed findings concerning the significant adverse impacts that would result from development of a facility in the designated area. The commission shall consider the conclusions, if any, reached by the State Energy Resources Conservation and Development Commission in its most recently promulgated comprehensive report issued pursuant to Section 25309. The commission shall transmit a copy of its report prepared pursuant to this subdivision to the State Energy Resources Conservation and Development Commission.

(c) The commission, after it completes its initial designations in 1978, shall, prior to January 1, 1980, and once every two years thereafter until January 1, 1990, revise and update the designations specified in subdivision (b). After January 1, 1990, the commission shall revise and update those designations not less than once every five years. Those revisions shall be effective on January 1, 1980, or on January 1 of the year following adoption of the revisions. The provisions of subdivision (b) shall not apply to any sites and related facilities specified in any notice of intention to file an application for certification filed with the State Energy Resources Conservation and Development Commission pursuant to Section 25502 prior to designation of additional locations made by the commission pursuant to this subdivision.

The Decision state; " Intervener Rob Simpson commented that the RPMPD did not indicate the scope of our interpretation of the term "public utility." The following discussion is limited to the interpretation of the term as it is used in the City's land use regulations." 8.1-20 This appears responsive to my question; "The PMPD should be clear and state if the Commission considers the project to be a Public Utility." The decision while pontificating around the issue, does not make the determination. Again I ask, is the project to be a public utility?

The Decision states; "Intervener Rob Simpson asks, in an RPMPD comment, "what steps that Commission has taken to comport with the Federal Coastal Zone Management Act (CZMA), including the public notice and participation opportunity requirements"? He does not identify specific portions of the CZMA that are relevant or applicable to this project and, after reviewing the CZMA, we do not find that it has any relevance. Regarding notice were the CZMA in some way applicable, we note that 16 U.S.C. § 1457, Section 311 of the CZMA, requires 30 days notice of hearings; notice of the full Energy Commission's consideration of adoption of the RPMPD was given on March 28, 2011, more than 60 days prior to the hearing."8.1-34 The Commission can not simply rely on Notice for some other action to satisfy the Notice requirements associated with other regulatory programs. Due process requires that the Notice actually notify people of the proposed action, whether it be an air pollution permit or coastal development permit. The Commission failed in this duty.

CONCLUSION

The above in no way should be construed to limit my grievances. Should the Commission permit arguments, I will file them. The Commission should reconsider its Decision in its entirety and deny the project. The Commission did not regularly pursue its authority and violated my rights in its Decision. There are feasible, environmentally superior alternatives including solar power on the facility buildings that would reduce significant impacts. The Decision failed to consider pipeline safety despite the lesson that the San Bruno pipeline explosion should have taught. Without the support of the Carlsbad Fire Department and for the other reasons in this proceeding the Decision fails its purpose ; § 1741. Application Proceeding; Purpose and Objectives. (a) The purpose of an application proceeding is to ensure that any sites and related facilities certified provide a reliable supply of electrical energy at a level consistent with the need for such energy, and in a manner consistent with public health and safety, promotion of the general welfare, and protection of environmental quality.

Submitted by;

_____/_____

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